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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,670	09/30/2003	Ludwig Busam	CM2701Q	5014

27752 7590 03/23/2006

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INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

GIBSON, KESHIA L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,670

Applicant(s)

BUSAM ET AL.

Examiner

Keshia Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/12, 5/10/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I in the reply filed on 2/6/06 is acknowledged. The traversal is on the ground(s) that the inventions are not patently distinct because the process of claims 12-20 cannot be used to make a materially different product containing the same nonwoven and that the alternative process offered by the office is theoretically the same as the claimed process since the claimed process makes reference to physical mixing of fibers in a solution. This is not found persuasive because 1) although the first argument may or may not be the case, the office only need to prove that either i) the product can be made by another process or ii) the process can be used to make a different product, not both as Applicant essentially contends; and 2) there is no recitation of "physical mixing" in the claims, only "contacting," which could include anything action from spraying to pouring to mixing.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

2. The disclosure is objected to because of the following informalities: it is assumed "of7" should read "of" (page 5, last line).

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-7 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sasaki (JP 1-292103, based on Polyglot Translation of record).

In regard to Claims 1, 4-7 and 11, Sasaki discloses an article comprising a topsheet, backsheet, and core, and further comprising a nonwoven for the absorbent core that comprises a first plurality of fibers (base fibers), hydrophilic monomers (such as acrylic

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acid and its salts), and a radial polymerization initiator (such as benzophenone) grafted to the first plurality of fibers; the amount of radial polymerization initiator molecules is less than 2% weight of the monomer molecules. Sasaki does not expressly disclose that the nonwoven possesses a specific surface tension or liquid strike through. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, a nonwoven with hydrophilic monomers and radial polymerization initiator molecules) except for a property or function (in the present case, a specific surface tension or liquid strike through) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). Furthermore, performing the disclosed test procedures to derive at the claimed test results is considered to be a product-by-process limitation. The process of performing is part of the method of producing the claimed invention. The method of forming the device is not relevant to the issue of patentability of the device itself. Therefore, this limitation has been given little patentable weight.

In regard to Claims 2-3, the article further comprises a second plurality of fibers (water-repellant fibers) are different from the first plurality of fibers (hydrophilic) and do not have hydrophilic polymers grafted to their surface.

7. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki.

In regard to Claims 8-9, Sasaki does not expressly disclose specific add-on weights for the polymers in relation to the plurality of fibers. However, Sasaki discloses that the amount of polymer on the fibers affects the absorption capacity article. Thus, the add-on weight of the fibers is considered to be a result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide specific add-on weights for the polymers in relation to the plurality of fibers, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

In regard to Claim 10, Sasaki does not expressly disclose that the topsheet is nonwoven. However, it is known within the art to provide a topsheet as a nonwoven material. Thus, it would have been obvious to one of ordinary skill in the art to provide the topsheet as a nonwoven material since it was known in the art to do so.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Young et al. (US 4,115,332), Brandt et al. (US 4,654,039), and Chmelir et al. (US 5,340,853).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-

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7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Keshia Gibson  
Examiner  
Art Unit 3761

klg 3/17/06

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

